

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY LEE WALKER,

Defendant-Appellant.

UNPUBLISHED

June 30, 2005

No. 252785

Wayne Circuit Court

LC No. 01-012386

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a plea-based conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to five to twenty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Approximately two months before the commission of the instant offense, defendant was sentenced to lifetime probation on a plea-based conviction of possession with intent to deliver less than fifty grams of cocaine . Following the commission of the instant offense, he was also charged with violation of probation. Defendant agreed to a *Cobbs*¹ agreement and entered a no contest plea. The court gave a preliminary sentence evaluation of thirty months to twenty years and further advised the defendant that if, prior to sentencing, he received a greater minimum sentence on the pending violation of probation matter, he could withdraw his plea. In addition, if he failed to appear for sentencing, the court would impose any sentence it deemed appropriate as long as it was proportionate. All three elements of the evaluation were set forth in writing and signed by the defendant.

Defendant failed to appear for sentencing. In compliance with the *Cobbs* agreement, the court sentenced defendant to five to twenty years. Defendant next appeared before the trial court in June 2003 and pleaded guilty to violation of probation. The court revoked probation and

¹ *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).

sentenced defendant to four to twenty years, to be served consecutively to the sentence in this case.

In October 2003, defendant moved to withdraw his plea or for resentencing. The court denied his motion finding that the defendant agreed to the *Cobbs* evaluation and failed to comply with the terms of the agreement, thus giving the court substantial and compelling reason to deviate from the sentencing guidelines.

II. WITHDRAWAL OF GUILTY PLEA

A. STANDARD OF REVIEW

Defendant claims error with respect to the denial of his post-judgment motion to withdraw his plea. A motion to withdraw a guilty plea after sentencing is a matter within the trial court's discretion. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999).

B. ANALYSIS

A no contest plea must be understanding, voluntary, and accurate. MCR 6.302(A). A no contest plea is understanding if the defendant is advised of and understands the rights set forth in MCR 6.302(B), is voluntary if the terms of any plea agreement are disclosed and the plea is defendant's own choice, i.e., it is not tendered under threat or duress, MCR 6.302(C), and is accurate if it is appropriate and evidence supports a finding that the defendant is guilty of the offense charged. MCR 6.302(D)(2).

Defendant contends that his plea was not understandingly made because he was not aware of possible events that could occur with respect to a charge of probation violation in a separate case pending before a separate judge. The only relation between the two cases was a condition of the plea agreement that defendant would be entitled to withdraw his plea if, before sentencing, he resolved the violation of probation matter and received a minimum sentence of more than thirty months. Defendant had not been sentenced in the probation violation case at the time he appeared for sentencing in this case. Therefore, defendant was not entitled to relief because the condition upon which he could withdraw his plea was not met.

Next, defendant contends that his plea was not understandingly made because he did not realize that the court might double the agreed-upon minimum sentence. The record shows that the plea agreement included a minimum sentence of thirty months if defendant appeared for sentencing as scheduled. If defendant failed to appear for sentencing for "whatever" reason, the court would impose any proportionate sentence it deemed appropriate. The court did not indicate any particular sentence length but noted that it would involve "very heavy time." While defendant may not have known the ultimate sentence he would receive, he was aware that it could exceed the conditional thirty-month minimum. The trial court did not abuse its discretion in denying defendant's motion to withdraw his plea. *Davidovich, supra*.

III. RESENTENCING

A. STANDARD OF REVIEW

Finally, defendant claims error with respect to the denial of his motion for resentencing. Sentencing issues are generally reviewed for an abuse of discretion by the trial court. *People v Garza*, 246 Mich App 251, 256; 631 NW2d 764 (2001).

B. ANALYSIS

Defendant's offense was subject to the legislative guidelines. MCL 777.13m. The guidelines as scored placed defendant in the E-II category, for which the minimum sentence range was ten to twenty-three months. MCL 777.65. Because defendant was a fourth habitual offender, the upper limit was doubled, MCL 777.21(3)(c), making the minimum sentence range ten to forty-six months. Defendant claims that the five-year minimum sentence was invalid because the trial court exceeded the guidelines without stating a substantial and compelling reason for doing so. MCL 769.34(3). We disagree. "A sentence that exceeds the sentencing guidelines satisfies the requirements of MCL 769.34(3) when the record confirms that the sentence was imposed as part of a valid plea agreement. Under such circumstances, the statute does not require the specific articulation of additional 'substantial and compelling' reasons by the sentencing court." *People v Wiley*, 472 Mich 153, 693 NW2d 800 (2005). Defendant was sentenced in accordance with a valid plea agreement, which involved any proportionate sentence the trial court deemed appropriate if defendant failed to appear for his original sentencing date. In light of defendant's record and the circumstances of this case, we find that the sentence was proportionate.

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello